



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
501**

**DISTRIBUTION
DATE
November 1, 2000**

1. SUBJECT: CHANGING A CLOSING CATEGORY OR REOPENING A CASE

2. PURPOSE: To set forth the procedures to be followed when reopening a case or changing a closing category.

3. BACKGROUND: On rare occasions, a situation arises where there is a need to reopen a closed case or change a closing category on a closed case. The Department of Fair Employment and Housing (DFEH) must be consistent when handling these situations.

4. PROCEDURES:

A. Changing A Closing Category:

- 1) Changing the closing category on a case is *not to be construed* as reopening the case. Rather, it is only intended to amend the record to accurately reflect the final action on a case.
- 2) The District Administrator has the discretion to change the closing category on a case that has been improperly closed (e.g., letters sent to an incorrect address resulting in closure on the basis of "Complainant Not Available" or "Complainant Failed to Cooperate") when BOTH of the following criteria are met:
 - a) the original closing category was between 01 and 15; and
 - b) the case has been closed less than 90 days.
- 3) The District Administrator will seek the approval of the Regional Administrator on requests that do not meet the criteria outlined above.
- 4) When a decision has been made to change the closing category, the District Administrator will send a letter to the complainant that explains the rationale for the decision (refer to Attachment 1 sample letter). A copy will also be sent to the respondent.

- 5) The new closing category will be entered into the CMIS program and also noted on the Complaint Register.

B. Circumstances Which Warrant the Reopening of a Case:

- 1) It is Department policy ***not*** to reopen a case where there is a signed settlement agreement or where a merit decision has been made (Closing Categories 16 through 25). Normally the only time a case would be reopened is where there are extenuating circumstances (such as evidence of Consultant malfeasance or fraud on the part of the respondent). Reopening cases in these types of instances requires the approval of the Regional Administrator with the concurrence of the Deputy Director Enforcement Division.
- 2) Cases closed with Closing Categories 01 through 15 that are in need of further work can be reopened with the approval of the District Administrator/Regional Administrator. Examples of circumstances which may result in a request to reopen a case are:
 - a) Cases closed on the basis of "complainant not available" or "complainant failed to cooperate" where it is discovered that the pre-closure correspondence was mailed to the incorrect address;
 - b) Cases where the complainant signed a withdrawal form but did not understand the case would be closed;
 - c) Cases closed on the basis of "no jurisdiction" where it is subsequently determined that the information which led to the closure was incorrect and the case is found to be jurisdictional;
 - d) Cases (other than "c" cases) closed with Closing Category 06, "Complainant Elected Court Action," where the complainant has changed his/her mind. District Administrators may want to discuss the reopening of these cases with the Regional Administrator. In making this decision, the District Administrator will consider the amount of time remaining on the case to ensure that a proper and timely investigation can be accomplished.
- 3) Cases taken "For Filing Purposes Only" ("b" cases), are generally *not to be* reopened. Rather, if a complainant provides new information which would warrant taking a complaint, a *new complaint* will be taken. However, if statutory time limits have expired, the "b" case must be reopened as long as the one year

anniversary date has not passed and there is sufficient time remaining on the case to ensure that a proper and timely investigation can be accomplished. These cases will not be reopened unless there is prior approval by the Regional Administrator.

- 4) Cases filed to obtain an immediate right-to-sue ("c" cases) will not be reopened unless there is prior approval by the Regional Administrator.
- 5) Cases which have already been closed with Closing Category 11, "Processing Waived to Another Agency," or Closing Category 12, "Determination of Another Agency Recognized," may be reopened as long as at least 90 days remain before the one year anniversary date *and* there has been no merit decision by the federal agency. Examples of such situations are:
 - a) Where the federal agency discovers that it does not have jurisdiction, but DFEH does;
 - b) Where the federal agency has evidence of a violation of the law, but lacks enforcement power; or
 - c) Cases closed administratively by the federal agency where it has discovered that an error has been made, but for some reason the federal agency is unable to correct the error.

C. Reopening Cases For Additional Work:

When a case is reopened for additional work, the following procedures apply:

- 1) Prior to reopening a case for additional work, the District Administrator will obtain approval from the Regional Administrator. This should be done through a memorandum to the Regional Administrator, copied to the Deputy Director Enforcement Division, explaining the basis of the recommendation.
- 2) The case file, along with the memorandum, will be forwarded to the Regional Administrator for a decision.
- 3) Upon receipt of the Regional Administrator's approval, the District Administrator will send an explanatory letter to the complainant (refer to Attachment 2 sample letter).
- 4) Enforcement Division staff in Headquarters will be notified that the case is being reopened.

- 5) The closing information will be deleted in the CMIS system by the Data Entry Clerk.
- 6) The District Administrator will be responsible for assigning the case to a Consultant for handling.
- 7) At the time the case is closed, a special closing letter will be used containing the language provided in Attachment 3.

D. Statute of Limitations Concerns:

When a case is reopened, for any reason, the original statute of limitations for filing a private lawsuit will remain in effect.

The District Administrator will notify the complainant, in writing, that the case is being reopened and explain the issues surrounding the statute of limitations. Refer to the suggested language provided below:

"In the event you decide to file a private lawsuit, it must be filed no later than (date of original statute of limitations). The reopening of your case does NOT extend the statute of limitations."

A copy of the original closing letter will accompany the District Administrator's letter.

5. APPROVAL:

Dennis W. Hayashi, Director	Date

SAMPLE

Date

Complainant Name
Address

RE: Case Number/EEOC #
Case Name

Dear

This letter is to notify you that the original basis for closure on the above-referenced case of discrimination has been rescinded. Instead of being closed on the basis of _____, the official Department record will reflect that your case has been closed on the basis of _____. This action has been taken because _____.

The effective date of closure will remain the date of the original letter, [date], and the right-to-sue information included in that letter remains unchanged. If you have any questions, please feel free to call.

Sincerely,

District Administrator

cc: Same as original closure letter
EEOC

SAMPLE

Date

Complainant Name
Address

RE: Case Number/EEOC #
Case Name

Dear

This letter is to notify you that the above-referenced case of discrimination is being reopened. This action is necessitated because

In the event that you decide to file a private lawsuit, it must be filed no later than (date of original statute of limitations). The reopening of your case does NOT extend the statute of limitations. You will be advised of the Department's decision regarding this matter as soon as a final determination is made. If you have any questions, please feel free to call.

Sincerely,

Consultant
Telephone Number:

cc: EEOC
Respondent Representative

SAMPLE

Date

Complainant Name
Address

RE: Case Number/EEOC #
Case Name

Dear

This letter is to notify you that the above-referenced case of discrimination is being reclosed. The official Department record will reflect that your case has been closed on the basis of _____.

In the event that you decide to file a private lawsuit, it must be filed no later than (date of original statute of limitations). The reopening of your case did NOT extend the statute of limitations. If you have any questions, please feel free to call.

Sincerely,

District Administrator

cc: Respondent Representative
EEOC